

E-Filed 3/12/07

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RUBEN ARMENTA,

Plaintiff,

v.

JOANNE B. BARNHART, Commissioner of
Social Security,

Defendant.

Case Number C 02-315 JF

ORDER¹ DENYING AMENDED
MOTION FOR ATTORNEYS' FEES

[re: doc. no. 17]

On December 6, 2002, the Court remanded this case for further development of the vocational expert's testimony regarding Plaintiff's ability to work. On September 5, 2006, Plaintiff's counsel filed a motion for attorneys' fees. Because it appeared that the motion had not been served upon counsel for Defendant, the Court ordered the Clerk to serve the motion upon counsel for Defendant and set a briefing schedule granting Defendant thirty days within which to respond to the motion. On October 20, 2006, Plaintiff's counsel filed an amended motion for attorneys' fees. That motion was filed electronically and thus was served by email upon counsel

¹ This disposition is not designated for publication and may not be cited.

1 for Defendant. Counsel for Defendant has not filed any response to the motion.

2 When a claimant recovers past-due benefits under 42 U.S.C. § 406, the claimant's
3 attorney may seek payment of reasonable attorneys' fees out of those benefits, such payment not
4 to exceed twenty-five percent of the total past-due benefits recovered. 42 U.S.C. § 406(b).
5 Contingent fee agreements that are within the twenty-five percent statutory ceiling generally are
6 enforced. *Gisbrecht v. Barnhart*, 535 U.S. 789, 792 (2002).

7 Plaintiff's counsel has submitted a declaration stating that Plaintiff was awarded past-due
8 benefits in the amount of \$14,661.15; that there was a twenty-five percent contingent fee
9 agreement in this case; and that counsel has been paid fees in the amount of \$3,925 for work
10 done in this case. Because it appears that counsel already has recovered fees in excess of twenty-
11 five percent of the total past-due benefits awarded to Plaintiff, the Court HEREBY DENIES
12 counsel's motion for additional attorneys' fees.

13 IT IS SO ORDERED.

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16 DATED: 3/12/07

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19 JEREMY FOGEL
United States District Judge

1 Copies of Order served on:

2
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